IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.9 OF 2003

IN

WRIT PETITION NO.2046 OF 1999

...

Rashtriya Kamgar Kranti Union
Mumbai ...Appellant

v/s.

Darabshaw B. Cursetjee’s sons
(Bombay) Pvt.Ltd. ...Respondent

AND

APPEAL NO.1041 OF 2002

IN

WRIT PETITION NO.2046 OF 1999

...

Darabshaw B. Cursetjee’s sons
(Bombay) Pvt.Ltd. ...Appellant

v/s.

Rashtriya Kamgar Kranti Union
Mumbai ...Respondent

...

Mr.P.K.Rele, Sr.Counsel with Mr.R.P.Rele and
Mr.P.Shah for Darabshaw B.Cursetjee's Sons.

Mr.A.D.Shetty with Ms.Rita Joshi and Mr.M.Kalzunkar and Mr.M.Thorat for Rashtriya Kamgar Kranti Union.

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CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.
DATED: 31ST OCTOBER, 2007

P.C.:

1. Both these Appeals are directed against the same order passed by the learned single Judge of this court in Writ Petition No.2046 of 1999 dated 27-11-2001.

2. The facts that are material and relevant for deciding these Appeal are that the Employer

M/s.Darabshaw B. Cursetjee's sons (Bombay) Pvt.Ltd. is a company which is engaged in the business of Stevedores, Dubashes and Lighterage Contractors in the port of Mumbai. They decided to close down one department. Therefore, a notice of retrenchment was issued on 5-6-1990. There were 62 workmen involved in so far as retrenchment is concerned. Out of these 62 workmen, 52 workmen were Khalasi and 10 workmen were Tandel. In the industry in question two unions were functioning at the relevant time and 62 workmen who were retrenched were members of either of the two unions. Majority union was Transport Dock Workers Union, and the other union was called National Dock Workers union. Out of 62 workmen, 38 workmen belonged to majority union and 24 workmen belonged to the minority union. Both the Unions took the matter before the Conciliation Officer. While the matter was pending before the Conciliation officer and in proceedings before the Conciliation Officer settlement was arrived at. That settlement was signed by the majority Union. The minority Union refused to sign the settlement. But the members of that Union did not agree with their union and they signed the settlement and accepted also the cheques that were offered under the settlement. This

settlement was attested by the Conciliation officer. It appears that in 1993, some of the retrenched workmen joined another Union by name Rashtriya Kamgar Kranti Union. This new union again initiated the conciliation proceedings and then a reference was made under Section 10 of the Industrial Dispute Act to the Central Government Industrial Tribunal No.1. The reference was "whether the action of the management of M/s. Darabshaw B. Cursetjee's Sons (Bombay) Pvt.Ltd. in terminating the services of Shri Madhukar R. Mahakal and 37 others workmen and Shri Shantaram Bhagoji Jadhav and 23 other workmen (as per list attached) with effect from 6-6-1990, is legal and justified. If not, to what extent relief the workmen are entitled to?"

3. That reference was registered as Reference No.CGIT-1 of 1995. The award was made by the Tribunal in that Reference on 20th September, 1997. The Tribunal held that the reference in relation to illegality on retrenchment and termination was not competent because the dispute about the retrenchment was resolved because of the settlement arrived at before the Conciliation Officer. The Tribunal after recording this finding in paragraph 40 has observed

that after having found that the Reference in relation to the validity of the termination is not competent because of the settlement, it is not necessary for the Tribunal to enter into the discussion on issue No.1 i.e. whether the retrenchment of the workmen is legal or illegal or they are entitled to reinstatement. Still the tribunal examined that question and recorded a finding that the retrenchment is valid. Thus, the reference was rejected by the Tribunal. Against that award, Writ Petition was filed in this Court by Rashtriya Kamgar Kranti Union, at whose instance the reference was made. That Writ Petition was decided by the learned single Judge of this Court by order dated 27-11-2001. The learned single Judge in paragraph 10 of the order held that the settlement arrived at between the parties was voluntarily arrived at and workmen belonging to both the Unions had agreed to accept the retrenchment compensation in accordance with law besides other payments, and therefore, that issue cannot be agitated once again in a reference. The learned single Judge, however, remanded the matter back for a fresh inquiry into the aspect as to whether the settlement was valid and the amounts that were agreed to be paid to the workers

were in accordance with law.

4. Feeling aggrieved by this judgment of the learned single Judge, these two Appeals have been filed.

5. The learned Counsel appearing for the Employer relying on the judgment of the Supreme Court in the case of State of Uttaranchal v/s. Jagpal Singh Tyagi, 2007 (115) FLR 280 submits that once both the Industrial Court and the learned single Judge found as a fact that the settlement was voluntarily accepted by all the workmen, the validity of the settlement could not have been challenged. He submits that because of the settlement there was no question of going into the validity or otherwise of the retrenchment and the issue whether the settlement was valid or invalid was not referred to the Industrial Tribunal and therefore that question could not have been gone into either by the Industrial Court or by this Court. The learned Counsel, therefore, submits that the order made by this Court remanding the matter back for inquiry into the validity of the settlement is liable to be set aside.

6. On the other hand, the learned Counsel appearing

for the Rashtriya Kamgar Kranti Union submits that the settlement that was arrived at was contrary to law and therefore, an inquiry into the aspect whether the settlement was proper or not has to be made. The learned Counsel relied on the judgment of the Supreme Court in the case of Oswal Agro Furane Ltd. & Anr. v/s. Oswal Agro Furane Workers Union & ors., 2005 I CLR 816.

7. Now, there is admittedly concurrent finding recorded by the Tribunal as also by the learned single Judge that the settlement that was arrived at before the Conciliation Officer was voluntarily arrived at and it was accepted by all the workers, and in view of this finding, there was no question of the dispute remaining as to the validity of the retrenchment. In our opinion, therefore, the finding recorded by the Industrial Tribunal that in view of the settlement dispute as to the validity of the termination did not subsist and therefore, the appropriate government could not have referred that dispute is perfectly valid, and in view of that finding the Industrial Court was not justified in going into the validity of the settlement because that was not referred to him. Similarly, the learned

single Judge for the same reasons also was not justified in going into that question. We do not propose to express any opinion on the question whether at the instance of the workers the appropriate government could have referred the issue about the validity of the settlement to the Industrial Court or not. Because it is clear that that issue has not been referred to the Industrial Court. What was referred to the Industrial Court for decision was validity of the termination order. The issue of validity of the termination order has come to an end because of the voluntarily settlement reached between the parties and therefore, considering the reference that was made and the manner in which the reference was worded, neither the Industrial Court nor the learned single Judge could have gone into the question of validity of the settlement. The learned Counsel appearing for the Trade-Union urged before us that the Industrial Court and the learned single Judge were not justified in holding that the settlement was voluntarily accepted by all the employees.

8. We have gone through the evidence on record and we find that the Industrial Court has rightly

appreciated the evidence and recorded the finding that the settlement was voluntarily reached between the parties. In this view of the matter, therefore, in our opinion, the Appeal filed by the Employer being Appeal No.1041 of 2002 succeeds and is allowed. While Appeal No.9 of 2003 filed by the Trade-Union fails and is dismissed.

. So far as Appeal No.1041 of 2002 is concerned, the order impugned in the Appeal passed by the learned single Judge of this court is set aside and the order passed by the Industrial Tribunal holding reference to be not competent is upheld.

. Both the Appeals disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)